

7 REGULATORY ENVIRONMENT, ENFORCEMENT AND SANCTIONS

7-0 INTRODUCTION

This chapter describes the regulatory environment in which FHA single-family appraisals are performed and the enforcement and sanctions that are available to HUD and other government entities in that environment. Appraisers are subject to:

- federal laws and regulations
- state licensing laws and regulations
- the requirements associated with any professional appraisal designations

This chapter enumerates these requirements and explains their connection to HUD's enforcement and sanctions processes.

7-1 REGULATORY ENVIRONMENT

A. FINANCIAL INSTITUTIONS REFORM, RECOVERY, ENFORCEMENT ACT OF 1989 (“FIRREA”)

FIRREA instituted reform and regulation of real estate appraising through Title XI, the Real Estate Appraisal Reform Amendments. The amendments achieved the following:

- established the Appraisal Foundation, comprising the Appraiser Qualifications Board (AQB) and the Appraisal Standards Board (ASB):
 - The AQB determines the minimum education, examination and experience requirements for state-certified and state-licensed appraisers.
 - The ASB promulgates the Uniformed Standards of Professional Appraisal Practice (USPAP).
- required that only a state-certified or state-licensed appraiser may perform appraisals for federally related transactions
- established that an appraiser trainee can sign an appraisal if a state-certified or state-licensed appraiser closely supervises the trainee, signs the appraisal report and inspects the property
- established the definition of a “state-certified real estate appraiser” as someone who has satisfied the requirements in a state or territory whose criteria for certification meets the minimum criteria for certification by the Appraiser Qualification Board of the Appraisal Foundation
- established the state agencies to license, certify and supervise appraisers

All appraisers performing services for FHA-insured mortgages must comply with USPAP in developing and reporting appraisals. Key aspects of USPAP include:

Standard	Citation
Ethics Rule	Conduct management, confidentiality and record-keeping
Competency Rule	Full responsibility of appraiser to have the knowledge and experience to complete the assignment competently or disclose any discrepancy before acceptance and take all necessary steps to correct
Departure Rule ¹	Permits limited departures from acceptable portions of USPAP reducing the reliability of the valuation
Jurisdictional Exception	Individual portions of USPAP can be superseded by law or public policy
Standard 1	In developing a real estate property appraisal, an appraiser must be aware of, understand and correctly employ the recognized methods and techniques that are necessary to produce a credible appraisal
Standard 2	In reporting the results of a real estate property appraisal, an appraiser must communicate each analysis, opinion and conclusion in a manner that is not misleading

In compliance with USPAP, unacceptable practices include:

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- estimating a specified (predetermined) value determined by the lender
- fee splitting between lenders and appraisers
- other practices that do not comply with HUD's standards

Also, USPAP contains statements on appraisal standards that have the full weight of USPAP. These statements were issued to clarify the existing standards. The ASB has also issued advisory opinions that currently do not establish new standards but offer advice on complex technical issues.

B. FEDERAL FINANCIAL INSTITUTION REGULATORY AGENCIES

The Federal Financial Institution Regulatory Agencies issued a final rule on appraisals in June 1994. In general, the threshold for requiring state-certified appraisers to perform appraisals on federally related transactions was raised to Two Hundred Fifty Thousand Dollars (\$250,000). However, FHA requires an appraisal for all applications for single-family mortgage insurance, regardless of transactional value.

C. FALSE, FICTITIOUS OR FRAUDULENT CLAIMS (18 U.S.C. §287, 1001) – CRIMINAL PENALTIES AND FINES

These statutes prescribe criminal penalties for any person who knowingly files a false claim on or against any department or agency of the United States Government.

¹ FHA does not permit departure from USPAP.

D. FALSE, FICTITIOUS OR FRAUDULENT CLAIMS ON HUD(18 U.S.C. 1010, 1012) – CRIMINAL PENALTIES AND FINES

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These statutes prescribe criminal penalties for any person who knowingly files a false claim on or against HUD.

E. FEDERAL FALSE CLAIMS ACT (31 U.S.C. §3729) – CIVIL FRAUD

The Federal False Claims Act defines the civil monetary damages imposed on any person who knowingly presents or files a false claim that was paid or approved by the United States Government.

F. 24 CFR PART 28 – PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

These regulations define the administrative procedures for imposing civil penalties and assessments by HUD officials against any person who makes or submits false claims or false statements to Federal authorities or to their agents.

G. 24 CFR PART 30 – CIVIL MONEY PENALTIES

These regulations define the money penalties that HUD may levy for submission of a false certification by another person – for example, an appraiser who makes a false certification at the bottom of the USPAP appraisal form about the truth/correctness of the appraisal data.

H. 24 CFR PART 24 – ADMINISTRATIVE SANCTIONS

These regulations define the administrative sanctions available to HUD officials for any person determined to have violated HUD regulations and policies.

I. STATE LAWS AND PROFESSIONAL ORGANIZATIONS

The appraiser must adhere to all state and local laws relating to appraisal, licensing and certification requirements. Also, as a voluntary member of an appraiser's professional organization, the FHA appraiser should adhere to that organization's guidelines on appraiser conduct. However, HUD has no enforcement powers in private organizations.

1. State Certifications

Appraisers on the FHA Register must be licensed, certified-residential or certified-general appraisers. To perform appraisals for FHA, appraisers must maintain and be able to prove that they are so certified. While some states do not require an appraiser to be certified, they provide a licensing program so appraisers can meet federal guidelines.

Appraisers must comply with the practices of their state unless the requirements of the state contradict those of the federal government; federal requirements preempt any and all state requirements.

The appraiser must report to HUD any action or pending action that relates to appraisal reports prepared by the appraiser two years subsequent to the date on which the action was initiated. After disposition of any disciplinary action or adjudication of the action, the appraiser must provide HUD with the documentation and official findings within 14 days.

2. Professional Organizations

The appraiser may be a member or hold designations in professional organizations. Such involvement is encouraged, but not required. If the appraiser is a member, candidate or associate of any organization, the appraiser must report any adjudicated actions resulting in the suspension of the appraiser to HUD within 14 days of such action. On disposition of the action or adjudication of the action, the appraiser must provide HUD with documentation and official findings. HUD reserves the right to suspend any appraiser found guilty of professional misconduct as adjudicated by the professional organization.

7-2 ENFORCEMENT

FHA intends to hold appraisers accountable for valuations that are inconsistent with USPAP or this Handbook. The Valuation Conditions Form must accurately reflect any locational, structural or mechanical deficiencies. FHA recognizes that most appraisals are properly valued and do not indicate improper action. Accordingly, HUD emphasizes quality assurance, but will take enforcement action when necessary.

A. STATE CERTIFICATION BOARDS

HUD will enforce actions against appraisers through existing state certification and licensing boards. HUD is required by law to refer appraisers to these boards if HUD considers the actions to be of such magnitude or frequency as to warrant such referral.

B. PROFESSIONAL ORGANIZATIONS

HUD will cooperate with and refer cases to the enforcement arms of all applicable professional organizations.

7-3 APPLICABLE REMEDIES AND SANCTIONS

FHA will review appraiser and appraisal performance data. In making any determination, the following will be considered:

- the seriousness and extent of the non-compliant action
- the degree to which the appraiser is responsible for that action
- the frequency of the action(s)
- any mitigating factors

HUD will impose sanctions on four tiers:

- 1 Notice of Appraisal Deficiencies and Remedial Education
- 2 Administrative Sanctions
- 3 Civil Sanctions
- 4 Criminal Sanctions

- (7-3) HUD expects that all appraisers performing appraisals for FHA are knowledgeable of HUD's policies and procedures. If, however, minor appraisal errors indicate lack of knowledge, HUD may require remedial education and training. For offenses arising from unethical behavior or for repeated offenses, HUD will apply more serious sanctions. All sanctions will be reported to the state regulatory agencies.

The following sections generally define the actions taken under each tier. Generally, these penalties will be expunged after three years. A table providing examples of offenses and possible sanctions is included at the end of this chapter.

A. NOTICE OF APPRAISAL DEFICIENCIES AND REMEDIAL EDUCATION

Education and training directives will be managed internally by HUD. If the evidence indicates that the appraisal deficiency is a matter of training, then the appraiser must undergo professional training. HUD will notify the appraiser and inform the appraiser of:

- the appraisal's deficiencies
- the findings that support the recommended training
- the recommended training
- the appraiser's right to refute the findings of the notice

The appraiser must appeal within 20 days from receipt of the notice if he or she disagrees with the findings. If the findings are adequately refuted, no action will be taken against the appraiser and the circumstances surrounding that particular incident will be noted in the appraiser's file. However, if the findings hold, the appraiser must comply with HUD's requirements for improved performance, including the type of training required and the time-frame for completion. This action will go on record in the appraiser's file.

B. ADMINISTRATIVE SANCTIONS

Administrative sanctions will be managed internally by HUD and consist primarily of removal from the FHA Register for a specified time. Removal from the FHA Register can be imposed for non-compliance with FHA policies and requirements on appraisals. HUD will consider the seriousness of the appraiser's acts or omissions and any mitigating factors.

HUD/FHA will notify the appraiser of the alleged violation and pending sanction in writing. If the appraiser believes that removal from the FHA Register is unwarranted, the appraiser must appeal in writing within 20 days and may arrange a meeting or conference call with FHA at a mutually acceptable time. If there is evidence and documentation of unacceptable performance, appraisers will be removed from the FHA Register at HUD/FHA's sole discretion.

Upon any legally effected removal, HUD will notify the state licensing or certification agency in writing that such appraiser has been removed from the FHA Register. HUD will provide the state agency with:

- the state license or certification number of the appraiser

- the reason for removal
- a copy of the original appraisal(s)
- a copy of the review report

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In addition to removal from the FHA Register, administrative sanctions include sanctions under 24 CFR Part 24, Debarment, Suspension and Limited Denials of Participation (LDP) from HUD and government-wide programs.

C. CIVIL SANCTIONS

HUD will pursue civil sanctions by initiating an investigation of the alleged non-compliant action. A report containing the findings and conclusions of the investigation will be submitted to HUD's Office of the General Counsel or The Enforcement Center. If the Office of General Counsel or The Enforcement Center determines that the investigation report supports an action, the respective office will submit a written request to the Department of Justice for approval to pursue civil sanctions. Civil sanctions are pursuant to Part 24 CFR 28—PFCRA and are described in Chapter 7-1.

D. CRIMINAL

If the non-compliant action is so egregious as to violate criminal law, HUD's Office of General Counsel or the Inspector General will refer the case to the Attorney General at the U.S. Department of Justice.

E. PERFORMANCE VIOLATIONS AND LEVEL OF SANCTION

The following chart outlines the type of sanction to be levied by the type of performance violation. For example, the appraiser may receive a Notice of Appraisal Deficiencies for a square footage error of less than 10% as a first offense. However, repeatedly making this mistake will result in removal from the FHA Register. If the violation is repeated so that it constitutes a pattern of misconduct, it may be considered gross negligence. The offense could also be considered gross negligence if the offense is so obvious that it could not have reasonably been the result of simple error. In this example, the sanction for gross negligence includes removal from the FHA Register and may include a Limited Denial of Participation or Debarment.

Violations of intent include knowing and willful non-compliance with FHA/HUD requirements, as well as extensive or repeated intentional violations. In this example, the appraiser is guilty of intentional misconduct if he or she chooses to disregard the requirement. Sanctions at this level may include debarment and civil and/or criminal penalties. The Department may impose civil money penalties or other sanctions for minor violations if the Department determines that circumstances warrant.

7-4 PERFORMANCE AND SANCTION MATRIX

This is not an exhaustive list of violations. It is meant to highlight the ramifications for non-compliant performance. This does not preclude the Department from pursuing other remedies or related sanction(s); the Department reserves the right to take any such other actions and remedies in accordance with applicable law. Time frames are included for illustration and can vary depending on the degree of violation.

	Violation	Ordinary Negligence		Gross Negligence	Willingly or Knowingly	Maliciously or Repeatedly
		First Offense	Repeated Offense			
A P P R A I S A L P R O C E	Failure to obtain timely and suitable comparable data	Notice of Appraisal Deficiencies on file	Removal from FHA Register (up to 1 year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
	Failure to correctly report form of ownership interest	Notice of Appraisal Deficiencies on file	Removal from FHA Register (up to 1 year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
	Failure to provide complete appraisal as per USPAP Standard 1	Notice of Appraisal Deficiencies on file	Removal from FHA Register (up to 1 year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties

	Violation	Ordinary Negligence		Gross Negligence	Willingly or Knowingly	Maliciously or Repeatedly
		First Offense	Repeated Offense			
SS	Failure to visit the subject property or comparable				Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
A P P R A I S A L R E P O R	Failure to report accurate appraisal as per USPAP Standard 2	Notice of Appraisal Deficiencies on file	Removal from FHA Register (up to 1 year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
	Value conclusion not supported by data and analysis in appraisal report	Notice of Appraisal Deficiencies on file	Removal from FHA Register (up to 1 year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
	Sq. footage error of less than 10%	Notice of Appraisal Deficiencies on file	Removal from FHA Register (up to 6 m)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties

	Violation	Ordinary Negligence		Gross Negligence	Willingly or Knowingly	Maliciously or Repeatedly
		First Offense	Repeated Offense			
TITLING	Sq. footage error of more than 10%	Removal from FHA Register (6 m to 1 year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register and/or Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
APPRAISAL REPORT	Overvaluation >5%	Removal from FHA Register (up to 1 year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register and/or Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
	Incomplete or inaccurate description of neighborhood	Notice of Appraisal Deficiencies on file	Removal from FHA Register (up to 1 year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
	Appraisal has inconsistencies and calculation error	Notice of Appraisal Deficiencies on file	Removal from FHA Register (up to 1 year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties

	Violation	Ordinary Negligence		Gross Negligence	Willingly or Knowingly	Maliciously or Repeatedly
		First Offense	Repeated Offense			
R T I N G	Incorrectly reports significant physical characteristics	Notice of Appraisal Deficiencies on file	Removal from FHA Register (3 to 6 m)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
R E P A I R C O N D I	Failure to recognize termite, fire or flood damage	Notice of Appraisal Deficiencies on file	Removal from FHA Register (1 to 6 m)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
	Failure to recognize property in Flood Plain	Removal from FHA Register (3 to 6 m)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register and/or Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
	Failure to correctly identify public sewer vs. septic system	Removal from FHA Register (1 to 3 m)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register and/or Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties

	Violation	Ordinary Negligence		Gross Negligence	Willingly or Knowingly	Maliciously or Repeatedly
		First Offense	Repeated Offense			
TI O N S	Failure to identify housing type	Removal from FHA Register (6m to 1 year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register and/or Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
REPAI R	Failure to accurately report defects that adversely effect property and cost under \$5,000 to repair	Removal from FHA Register (6 m to 1 year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
C O N D I T	Failure to accurately report defects that adversely effect property that cost over \$5,000 to repair	Removal from FHA Register (6 m to 1year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties

	Violation	Ordinary Negligence		Gross Negligence	Willingly or Knowingly	Maliciously or Repeatedly
		First Offense	Repeated Offense			
I O N S	Failure to report major defects which may impair the health or safety of the property occupants	Removal from FHA Register (up to 6 m)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register and/or Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
PROFE	Failure to maintain files	Notice of Appraisal Deficiencies on file	Removal from FHA Register (up to 1 year)	Removal from FHA Register and/or Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
SS IO N	Conflict of interest undisclosed	Removal from FHA Register (6 m to 1 year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register and/or Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties

	Violation	Ordinary Negligence		Gross Negligence	Willingly or Knowingly	Maliciously or Repeatedly
		First Offense	Repeated Offense			
AL I SM	Failure to maintain good standing with appraisal licensing board	Removal from FHA Register (up to 1 year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register and/or Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties
	Performing an appraisal in a jurisdiction where not licensed	Notice of Appraisal Deficiencies on file	Removal from FHA Register (up to 1 year)	Removal from FHA Register and/or LDP/Debarment	Removal from FHA Register Debarment Civil Penalties	Removal from FHA Register Debarment Civil Penalties Criminal Penalties

Note: The Department may apply Civil Money Penalties for these violations.